

# Amendment No. 10

## Agreement No. 2004MPA3427



This Amendment No. 10 is entered into by and between the **State of Montana** (“**Licensee**”) and **Environmental Systems Research Institute, Inc.** (hereinafter referred to as “**Esri**”).

WHEREAS, Esri and Licensee entered into a Master Purchase Agreement with an effective date of October 28, 2005 (hereinafter “**Agreement**”); and

WHEREAS, the parties desire to amend the Agreement to extend the term for an additional two (2) years and update applicable documents and rates;

NOW THEREFORE, the parties agree to the following:

1. **Pursuant to Article 2 Term of the Agreement of the E500.** The term of this Agreement is hereby extended until October 28, 2020 (“**Renewal Term**”), unless terminated earlier as provided in the Agreement. To the extent this Renewal Term extends the contract term beyond that allowed by state law, this Amendment will be considered the start of a new contract term.
2. **Compliance with Laws.** Esri shall, in performance of work under this Agreement, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders which may include, but is not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Esri is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119]. Any subletting or subcontracting by Esri subjects subcontractors to the same provisions. In accordance with 49-3-207, MCA, and Executive Order No. 04-2016, Esri agrees that the hiring of persons to perform this Agreement is made on the basis of merit and qualifications, and there is no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Agreement.
3. **Termination for Noncompliance with Department of Administration Requirements.** The Department of Administration, under the provisions of Section 2-17-514, MCA, retains the right to cancel or modify any contract, project, or activity that is not in compliance with, if applicable, the Department’s Plan for Information Technology, the State Strategic Plan for Information Technology, or any Statewide IT policy or standard in effect as of the date of contract execution. In the event of such termination, the State will pay for products and services delivered to date and any applicable termination fee specified in the Statement of Work or work order. Any modifications to this Agreement must be mutually agreed to by the parties.
4. **CIO Oversight.** The Chief Information Officer (CIO) for the State of Montana, or designee, may perform contract oversight activities. Such activities may include the identification, analysis, resolution, and prevention of deficiencies that may occur within the performance of contract obligations. The CIO may require the issuance of a right to assurance or may issue a stop work order (2-17-514, MCA).
5. **Assignment and Delegation.** Except for the sale of all or substantially all of Esri’s assets, Esri may not assign, transfer or subcontract any portion of this Agreement without Licensee’s prior written consent. (18-4-141, MCA.) Such consent shall not be unreasonably withheld. Esri is responsible to Licensee for the negligent acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such authorized under this Agreement, and for the acts and omissions of persons employed directly by Esri. No contractual relationships exist between any subcontractor and Licensee under this Agreement.
6. **Custom Software, Technical Data, and Assistance License Addendum.** The Custom Software, Technical Data, and Assistance License Addendum (E600 12/02/2011) is deleted and replaced by the attached Custom Software, Technical Data, and Assistance License Addendum (E600 08/22/2014).
7. **Time and Materials Rate Schedule.** The existing Attachment B Time and Materials Rate Schedule is deleted and replaced by the attached 2019 Time and Materials Rate Schedule.

# Amendment No. 10 Agreement No. 2004MPA3427



Except as may be specifically modified by this Amendment No. 10, all other terms and conditions of the Agreement and any Amendment(s) or Addendum(s) constitute the entire agreement between the parties and supersede all prior and contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 10 as of the date of the last party to sign below.

STATE OF MONTANA  
(Licensee)

Legal Address: 125 N. Roberts, Mitchell Building, Helena MT 59620

By: Tim Bottenfield  
Authorized Signature

Printed Name: Tim Bottenfield

Title: CIO

Date: 10/25/2018

ENVIRONMENTAL SYSTEMS RESEARCH  
INSTITUTE, INC. (Esri)

380 New York Street, Redlands, CA 92373-8100

By: [Signature]  
Authorized Signature

Printed Name: Timothy Brazeal

Title: Manager, Commercial & Government

Date: 10/24/2018

STATE OF MONTANA  
(Licensee)

Legal Address: 125 N. Roberts, Mitchell Building, Helena MT 59620

By: Don Harris  
Authorized Signature

Printed Name: Don Harris

Title: Attorney

Date: 10/24/2018



**CUSTOM SOFTWARE, TECHNICAL DATA, AND  
ASSISTANCE LICENSE ADDENDUM  
(E600 08/22/2014)**

Esri, 380 New York St., Redlands, CA 92373-8100 USA • TEL 909-793-2853 • FAX 909-793-5953

## **ARTICLE 1—DEFINITIONS**

All words, phrases, or terms defined in other parts of this Agreement shall have the same meaning in this Addendum. The following additional words, phrases, or terms shall have the following meaning:

- i. "Commercial Off-the-Shelf Software" or "COTS Software" means all or any portion of Esri's proprietary software technology accessed or downloaded from an authorized Esri website or delivered on any media in any format, including backups, updates, service packs, patches, hot fixes, or permitted merged copies, available under license to the general public.
- ii. "Custom Software" means all or any portion of the computer software code, components, dynamic link libraries (DLLs), and programs delivered on any media provided in source, object, or executable code format(s), inclusive of backups, updates, or merged copies permitted hereunder or subsequently supplied under any Task Order, exclusive of Commercial Off-the-Shelf Software, or COTS Software.
- iii. "Deliverables" means Custom Software or Technical Data specified for delivery or use by Licensee under a firm fixed price Task Order.
- iv. "Map Data" means any digital dataset(s) including geographic, vector data coordinates, raster, or associated tabular attributes supplied by either party for use in the performance of any Task Order, which must be separately licensed from the vendor.
- v. "Services" means consulting support that is being performed by Esri on a time and materials (T&M) hourly basis in exchange for compensation from Licensee.
- vi. "Services Output" means any tangible output produced as a result of the Services provided by Esri under this Addendum. Services Output can include, but is not limited to, reports, training materials, and Custom Software.
- vii. "Task Order" means an ordering document (purchase order, task order, or other authorizing document) generated by either Licensee or Esri for professional services issued under this Addendum and containing substantially the same information as outlined in the sample task order form attached as Attachment A. Any additional terms and conditions in Licensee's ordering or authorizing document will be void and may only be incorporated into this Agreement by written amendment signed by both parties.
- viii. "Technical Data" means, without limitation, all technical materials including formula, compilations, software code or programs, methods, techniques, know-how, technical assistance, processes, algorithms, designs, data dictionaries and models, schematics, user documentation, training documentation, specifications, drawings, flowcharts, briefings, test or quality control procedures, or other similar information supplied or disclosed by Esri under any Task Order. Technical Data does not include COTS Software, COTS data, or COTS documentation, which must be separately licensed by Licensee under Esri's commercial Software license, or Map Data.

## **ARTICLE 2—TASK ORDERS AND PROJECT SCHEDULE**

Esri shall provide Deliverables and/or Services as specified in a specific Task Order relating to the COTS Software identified in the Task Order.

Unless otherwise provided by Esri in writing, Esri's Contracts Manager for the Professional Services Division is authorized to agree to Task Orders. Licensee shall provide advanced written notification of the name and title of the representative authorized to sign Task Orders and bind Licensee. Each party may enter into Task Orders at its sole discretion and shall not have any obligation under a Task Order until it is signed by both parties.

Each party shall identify in writing the project manager who is responsible for the Services or Deliverables specified in Task Orders. By written notice, either party may replace the project manager at any time with a similarly qualified person.

The period of performance of each Task Order shall be specified in each Task Order.

### **ARTICLE 3—RESERVATION OF OWNERSHIP AND GRANT OF LICENSE**

Except as specifically granted in this Article 3, Esri or its licensors own and retain all right, title, and interest in the Deliverables and Services Output. This Addendum does not transfer ownership rights of any description in the Deliverables or Services Output to Licensee or any third party. Subject to the terms and conditions set forth in this Addendum and effective upon the transfer, by any means, of the Deliverables or Services Output to the Licensee, Esri hereby grants to Licensee a nonexclusive, worldwide license in the Deliverables or Services Output to use, modify, and reproduce the Deliverables or Services Output in connection with Licensee's authorized use of COTS Software. The license grant in the immediately preceding sentence does not apply to Map Data, which Licensee must separately and directly license from the vendor.

Licensee shall retain any patent, copyright, or trademark or proprietary notices on all items licensed under this Addendum and shall take other necessary steps to protect Esri's or its licensor's intellectual property rights.

### **ARTICLE 4—PATENTS AND INVENTIONS**

During the performance of Task Orders, the parties anticipate that inventions, innovations, and improvements ("Inventions") relating to the subject matter of such Task Orders may be conceived solely or jointly by principals, employees, consultants, or independent contractors (hereinafter called "Inventors") of the parties hereto.

The parties agree that, as of the effective date of this Agreement, Esri or its licensors own all intellectual property rights in the COTS Software. During the term of this Agreement, Licensee shall promptly notify Esri if Licensee becomes aware of any known or suspected infringement or violation of these rights.

Each party shall retain title to any Inventions made or conceived solely by its Inventors during the term of this Addendum, including, but not limited to, such Inventions that Esri's Inventors solely make or conceive while providing technical assistance pursuant to this Addendum. The parties shall jointly own any Inventions made or conceived jointly by Inventors from both parties.

Where only one party has title to an Invention, that party, at its sole discretion, shall have the right, but not the obligation, at its expense to (i) decide on whether or not to seek or maintain, or to continue to seek or maintain, patent protection in any country on such Invention; (ii) decide the extent and scope of such protection; and (iii) protect and enforce in any country any patents issued on such Invention.

Except as provided in the next paragraph, where an Invention is jointly owned, each party shall share equally the costs of acquiring protection for the Invention and furnish the other joint owner with assistance reasonably required for acquiring protection.

The acquisition or maintenance of protection shall not be abandoned by a joint owner (the "Assigning Owner") without giving the other joint owner (the "Beneficial Owner") an opportunity to intervene and acquire or maintain protection at the Beneficial Owner's expense. The Assigning Owner electing not to acquire or maintain protection on any Inventions in any country or countries shall assign such of its rights in such Inventions to the Beneficial Owner as is necessary to enable the Beneficial Owner to protect such Inventions in such country or countries at its expense and for its exclusive benefit. In such event, the Assigning Owner shall make available to the Beneficial Owner the Assigning Owner's Inventors and shall otherwise cooperate with the Beneficial Owner in order to assist the Beneficial Owner in protecting such Inventions. The Beneficial Owner shall reimburse the Assigning Owner for all reasonable out-of-pocket expenses incurred in rendering such assistance. If any such Inventions are so protected by the Beneficial Owner, then the Assigning Owner shall have a license with respect to the subject matter of such protected Inventions in such country or countries.

All Inventions made by Inventors during performance of tasks and activities defined by Task Orders during the term of this Addendum will be presumed, absent clear and convincing evidence to the contrary, to have resulted from the Inventors' activities under the Task Orders.

Neither party may license, transfer, sell, or otherwise alienate or encumber its interest in jointly owned Inventions without the written consent of the other party, which shall not be unreasonably withheld by either party. However, either party may transfer such Inventions to its Affiliates for their internal use only. "Affiliate" shall mean the parent or subsidiary companies

of a party or subsidiary companies to a party's parent provided there is more than fifty percent (50%) ownership of the subsidiary by the parent or party.

#### **ARTICLE 5—CONFIDENTIALITY OF DELIVERABLES AND SERVICES OUTPUT**

Unless otherwise agreed in writing, the Deliverables and Services Output are Esri confidential information, and Licensee shall preserve and protect the confidentiality of said Deliverables and Services Output to the extent permitted by law. Insofar as its rights may be legally restricted, Licensee agrees not to reverse engineer or decompile Deliverables or Services Output delivered only in object code, executable code, or formats subject to similar or greater means of access control (collectively, "Secure Formats"). For Deliverables or Services Output delivered in source code or other human-readable formats, Licensee shall have met its obligations under this Article if its disclosure of Deliverables or Services Output is limited to Deliverables or Services Output in Secure Formats, *provided that* the means for reverse engineering, decompiling, or disassembling such Deliverables or Services Output is withheld from such disclosure, and the person or entity in receipt of such Deliverables or Services Output similarly agrees not to perform such acts or allow others to do so.

Except as provided in the preceding paragraph, Licensee shall not disclose any Deliverables or Services Output to employees or third parties without the advanced written consent of Esri. However, Licensee may, without such consent, make such disclosures to employees as are reasonably required for the Licensee's authorized use of the COTS Software, provided that such disclosure is strictly limited to the portions of the Deliverables or Services Output needed for that purpose. The disclosures permitted under this paragraph shall not relieve Licensee of its obligation to maintain the Deliverables or Services Output in confidence and comply with all applicable laws and regulations of the United States. Licensee must comply with Article 11 in making any permitted disclosures.

Licensee shall not have any obligation to protect any part of a Deliverable or Services Output that it can prove (i) was in Licensee's possession before receipt from Esri; (ii) is or becomes a matter of public knowledge through no fault of Licensee; (iii) is rightfully disclosed by a third party without a duty of confidentiality; (iv) is disclosed by Esri to a third party without a duty of confidentiality; (v) is independently developed by Licensee; or (vi) is required to be disclosed by operation of law.

#### **ARTICLE 6—ACCEPTANCE**

- A. For Time and Materials Task Orders.** Services are provided strictly on a time and materials basis subject to the task order not-to-exceed funding limit. The Services delivered will be deemed accepted and in compliance with the professional and technical standards of the software industry unless Esri is notified otherwise by Licensee within ten (10) days after delivery.
- B. For Firm Fixed Price Task Orders.** Deliverables for fixed price Task Orders shall be categorized as follows:
- i. "DELIVERABLE ACCEPTED" means a Deliverable conforming to applicable Task Order(s) with no more than minor nonconformities. Licensee shall complete its acceptance review within ten (10) working days of receiving each Deliverable.
  - ii. "DELIVERABLE ACCEPTED WITH REWORK" means a deliverable substantially conforming to applicable Task Order(s), but having a significant number of identified nonconformities and accepted subject to rework by Esri. Esri shall rework the Deliverable for the identified nonconformities and resubmit it within thirty (30) days. Licensee will rerun its acceptance review for the nonconformities detected in the initial review within ten (10) working days of such resubmission and will reclassify the deliverable as either DELIVERABLE ACCEPTED or DELIVERABLE REJECTED.
  - iii. "DELIVERABLE REJECTED" means a Deliverable that fails to substantially conform to applicable Task Order(s). Esri shall rework the Deliverable and resubmit it to Licensee within thirty (30) days, at which time Licensee shall have ten (10) working days to rerun its acceptance review and reclassify the deliverable as either DELIVERABLE ACCEPTED or DELIVERABLE REJECTED.

Licensee agrees it shall not use any Deliverable in its business operations before acceptance as described in B.i. or B.ii. If Esri does not receive within ten (10) working days after delivery written notice that the Deliverable is "ACCEPTED WITH REWORK" or "REJECTED" in accordance with B.ii. or B.iii., or if Licensee uses the Deliverable in its business operations, the Deliverable shall be deemed, as of the first to occur of either of these events, to have been accepted.

## ARTICLE 7—CHANGES TO SCOPE OF WORK

Licensee may, at any time, request changes within the general scope of an open Task Order. If the parties agree to such changes and such changes cause an increase or decrease in the cost or time required to provide a Deliverable under any Task Order (regardless of whether the Deliverable itself is changed), an equitable adjustment in the price or schedule, or both, shall be made, and the Task Order shall be modified accordingly in writing and signed by both parties.

## ARTICLE 8—COMPENSATION; INVOICES

**A. For Time and Materials Task Orders.** Esri shall prepare and submit to Licensee written monthly invoices showing the compensation due for work performed, including travel time, under Task Orders to the Licensee address listed on the Task Order. The amount invoiced will be equal to the number of hours expended during the previous month multiplied by the rates for labor categories set forth in Attachment B. Meals will be invoiced on a "per diem" basis in accordance with the full daily limits stated in the most current Federal Travel Regulations. Other direct costs (ODCs) may include travel-related expenses and meal per diem.

Esri may reallocate the budget between activities, labor categories, and ODCs as necessary to facilitate the work effort, provided the overall price is not exceeded. In the event Esri reaches the funded not-to-exceed Task Order value and the activities are not completed, Licensee may increase the order funding to allow additional work to be performed, or Esri may stop work without further obligation or liability.

**B. For Firm Fixed Price Task Orders.** Unless otherwise specified in a Task Order, Esri shall prepare and submit monthly invoices based on the percent complete for each Deliverable as of the end of the preceding month. Upon acceptance of all Deliverables under a Task Order, the unpaid balance of the total Task Order value is due.

**C. Payment.** Licensee shall pay each invoice no later than thirty (30) days after receipt thereof. Payment shall be made to the Esri address identified on original Esri invoices.

## ARTICLE 9—LIMITED WARRANTY AND DISCLAIMER OF WARRANTIES

### A. For Time and Materials Task Orders

i. **Limited Warranty.** Esri warrants that for a period of ninety (90) days from the date of acceptance that the Services will substantially conform to the professional and technical standards of the software industry. During the limited warranty period, Licensee may require Esri to reperform the Services, at no additional cost to the Licensee, which do not substantially conform to such standards. Services Output is provided "AS IS" without warranty of any kind.

#### ii. Disclaimer of Warranties

(a) WITH THE EXCEPTION OF THE LIMITED WARRANTY SET FORTH IN SECTION A.i. OF THIS ARTICLE 9, ESRI DISCLAIMS, AND THIS ADDENDUM EXPRESSLY EXCLUDES, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, ANY AND ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

### B. For Firm Fixed Price Task Orders

i. **Limited Warranty.** Esri warrants that for a period of ninety (90) days after acceptance of a Deliverable that the unmodified Deliverable will substantially conform, in a manner consistent with the professional and technical standards of the software industry, with the applicable written specifications that are included in, or delivered by Esri pursuant to, the corresponding Task Order.

#### ii. Disclaimer of Warranties

(a) WITH THE EXCEPTION OF THE LIMITED WARRANTY SET FORTH IN SECTION B.i. OF THIS ARTICLE 9, ESRI DISCLAIMS, AND THIS AGREEMENT EXPRESSLY EXCLUDES, ALL OTHER

OBLIGATIONS TO CORRECT OR REPLACE DELIVERABLES AND OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, (i) ANY WARRANTY THAT DELIVERABLES ARE ERROR-FREE, FAULT-TOLERANT, OR FAIL-SAFE; WILL OPERATE WITHOUT INTERRUPTION; ARE COMPATIBLE WITH ALL EQUIPMENT AND SOFTWARE CONFIGURATIONS; OR THAT ALL NONCONFORMITIES CAN OR WILL BE CORRECTED; (ii) ANY WARRANTY THAT THE DELIVERABLES ARE DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS THAT MAY LEAD TO DEATH, PERSONAL INJURY, OR PHYSICAL PROPERTY DAMAGE OR ENVIRONMENTAL DAMAGE (ANY SUCH USE BY LICENSEE SHALL BE AT LICENSEE'S OWN RISK AND COST); (iii) ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINTERFERENCE, SYSTEM INTEGRATION, AND NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

- C. Map Data Disclaimer.** ESRI DOES NOT WARRANT IN ANY WAY THE MAP DATA, WHETHER SUPPLIED BY LICENSEE OR ESRI, OR THE VENDORS OF EITHER OF THEM. IF SUPPLIED BY ESRI OR ITS VENDORS, ESRI BELIEVES SUCH MAP DATA IS RELIABLE, BUT IT MAY NOT BE FREE OF NONCONFORMITIES, DEFECTS, ERRORS, OR OMISSIONS; BE AVAILABLE WITHOUT INTERRUPTION; BE CORRECTED IF ERRORS ARE DISCOVERED; OR MEET LICENSEE'S NEEDS OR EXPECTATIONS. ESRI IS NOT INVITING RELIANCE ON MAP DATA, AND LICENSEE SHOULD ALWAYS VERIFY ACTUAL DATA FROM DOCUMENTS OF RECORD, FIELD MEASUREMENT, OR OBSERVATION.

#### ARTICLE 10—LIMITATION OF LIABILITY

- A. Disclaimer of Certain Types of Liability.** ESRI AND ITS LICENSORS WILL NOT BE LIABLE TO LICENSEE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOST PROFITS; LOST SALES; BUSINESS EXPENDITURES; INVESTMENTS; BUSINESS COMMITMENTS; LOSS OF ANY GOODWILL; OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR USE OF THE DELIVERABLES OR SERVICES OUTPUT, HOWEVER CAUSED, ON ANY THEORY OF LIABILITY, WHETHER OR NOT ESRI OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.
- B. General Limitation of Liability.** IN NO EVENT WILL ESRI'S TOTAL CUMULATIVE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR USE OF THE DELIVERABLES OR SERVICES OUTPUT, FROM ALL CAUSES OF ACTION OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY, MISREPRESENTATION, OR OTHERWISE, EXCEED THE AMOUNTS PAID TO ESRI BY LICENSEE FOR THE DELIVERABLES OR SERVICES OUTPUT FROM WHICH THE LIABILITY DIRECTLY AROSE.
- C. Applicability of Disclaimers and Limitations.** Licensee agrees that the limitations of liability and disclaimers set forth in this Addendum will apply regardless of whether Licensee has accepted the Deliverables, or any other product or service delivered by Esri. The parties agree that Esri has set its prices and entered into this Addendum in reliance upon the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose or cause consequential loss), and that the same form an essential basis of the bargain between the parties.

#### ARTICLE 11—EXPORT CONTROL REGULATIONS

Licensee must comply with all applicable laws and regulations of the United States including, without limitation, its export control laws. Licensee expressly acknowledges and agrees that Licensee shall not export, reexport, transfer, or release COTS Software, Services Output, or Deliverables in whole or in part, to (i) any US embargoed country (including to a resident of any US embargoed country); (ii) any person on the US Treasury Department's List of Specially Designated Nationals; (iii) any person or entity on the US Commerce Department's Lists of Parties of Concern; or (iv) any person or entity where such export, reexport, or provision violates any US export control laws or regulations including, but not limited to, the terms of any export license or licensing provision and any amendments and supplemental additions to US export laws as they may occur from time to time.

## ARTICLE 12—TERM AND TERMINATION

- A. Term.** Unless terminated earlier pursuant to Sections B, C, or D of this Article, this Addendum shall terminate simultaneously with the Agreement.
- B. Termination for Convenience by Licensee.** Licensee may terminate this Addendum or any Task Order at any time on thirty (30) days' written notice to Esri and upon payment to Esri of all amounts due to date pursuant to this Addendum, including reasonable termination expenses and the pro rata contract price for the Task Orders affected.
- C. Termination for Cause by Licensee.** Licensee shall have the right, in addition and without prejudice to any other rights or remedies, to terminate this Addendum or any Task Order for any material breach of this Addendum by Esri that is not cured within fifteen (15) days of receipt by Esri of a notice specifying the breach and requiring its cure.
- D. Termination for Cause by Esri.** Esri may terminate this Addendum immediately upon written notice to Licensee in the event that one or more of the following occur:

### *Insolvency of Licensee*

- i. Licensee becomes insolvent, ceases to pay its debts in the ordinary course of business, is unable to pay its debts as they become due, or makes an assignment for the benefit of creditors;
- ii. A trustee or receiver is appointed for any or all of Licensee's assets;
- iii. Any bankruptcy or insolvency proceeding under any federal or state bankruptcy or insolvency code, or similar law, whether voluntary or involuntary, is commenced by or against Licensee;
- iv. Licensee is dissolved or liquidated;
- v. There is any
  - a. Material change in the management or control of Licensee;
  - b. Transfer of any substantial part of Licensee's business; or
  - c. Bulk transfer by Licensee pursuant to the Uniform Commercial Code or similar law.

### *Default or Breach by Licensee*

- vi. Licensee defaults under this Addendum three (3) or more times within any six (6)-month period, regardless of whether such defaults are cured;
- vii. Licensee engages in the unauthorized use of the COTS Software;
- viii. Licensee engages in the unauthorized use, reproduction, or disclosure of Deliverables or Services Output;
- ix. Licensee breaches any provision of this Addendum and there is no possibility of cure;
- x. Licensee fails to pay after ten (10) days' written notice the amounts due to Esri pursuant to the "Compensation; Invoices" Article 8 of this Addendum.

## **E. Obligations upon Termination**

- i. Upon termination by Esri, all outstanding Task Orders shall be subject to cancellation, acceptance, or rejection, at the sole discretion of Esri.
- ii. In the event of termination by Esri pursuant to Subsections v–x of Section D of this Article, the due dates of all invoices for amounts owed by Licensee to Esri shall be accelerated automatically so that such amounts become due and payable on the effective date of the termination, regardless of the payment term provisions set forth in this Addendum.
- iii. Upon termination of this Addendum, the parties shall have no further obligations pursuant to its terms, except that Articles 1, 4, 5, 8, 9.A.ii., 9.B.ii., 9.C., 10–14, 17, and 19 shall survive termination. Unless Licensee has materially breached its obligations under this Addendum, Articles 3, 9.A.i., and 9.B.i. shall also survive termination. Except where specifically stated otherwise, any current or future cause of action or claim of one party because of any breach or default of the other party and any accrued license rights shall survive to the degree necessary to permit the complete fulfillment or discharge of the cause of action.

## ARTICLE 13—RESTRICTIONS ON SOLICITATION

Licensee shall not solicit for hire any Esri employee who is associated with efforts called for under this Addendum during the term of this Addendum and for a period of one (1) year thereafter. In the event the foregoing provision is breached, Licensee



shall pay Esri liquidated damages for recruiting and training costs equal to twelve (12) months of the employee's compensation plus any legal expenses associated with the enforcement of this provision. The foregoing shall in no way restrict Licensee from publicly advertising positions for hire in newspapers, professional magazines, or Internet postings.

**ARTICLE 14—TAXES**

Values specified in Task Orders are exclusive of state, local, and other taxes or charges (including, without limitation, custom duties, tariffs, and value-added taxes, but excluding income taxes payable by Esri). In the event such taxes or charges become applicable to Deliverables or Services Output, Licensee shall pay any such taxes upon receipt of written notice that they are due.

**ARTICLE 15—INDEPENDENT CONTRACTOR**

Esri is, and at all times will be, an independent contractor. Nothing in this Addendum shall be deemed to create an employer/employee, principal/agent, or joint venture relationship. Neither party has the authority to enter into any contracts on behalf of the other party or otherwise act on behalf of the other party.

**ARTICLE 16—FORCE MAJEURE**

If the performance of this Addendum, or any obligation except the making of payments, is prevented, restricted, or interfered with by reason of fire, flood, earthquake, explosion, or other casualty or accident; strikes or labor disputes; inability to procure or obtain delivery of parts, supplies, or power; war, terrorist act, cyberattack, or other violence; any law, order, proclamation, regulation, ordinance, demand, or requirement of any governmental agency; or any act or condition whatsoever beyond the reasonable control of the affected party, the party so affected, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such prevention, restriction, or interference.

**ARTICLE 17—CLAIMS MUST BE FILED WITHIN ONE (1) YEAR**

**Any claim related to this Addendum or the Services or Deliverables may not be brought unless brought within one (1) year. The one (1)-year period begins on the date when a party knew or should have known of the claim. If it is not filed during the one (1)-year period, then that claim is permanently barred. This applies to Licensee and Licensee's successors and/or assigns. It also applies to Esri and/or Esri's successors and assigns.**

**ARTICLE 18—NOTICE**

All notice required by this Addendum shall be in writing to the parties at the following respective addresses, or to such other address as a party may subsequently specify in a notice provided in the manner described in this Article, and shall be deemed to have been received (i) upon delivery in person; (ii) upon the passage of three (3) days following post by first class registered or certified mail, return receipt requested, with postage prepaid; (iii) upon the passage of two (2) days following post by overnight receipted courier service; or (iv) upon transmittal by confirmed e-mail or facsimile, provided that if sent by e-mail or facsimile, a copy of such notice shall be concurrently sent by US certified mail, return receipt requested and postage prepaid, with an indication that the original was sent by e-mail or facsimile and the date of its transmittal:

Licensee: State of Montana, Dept. of Administration  
State Information Technology Services Division-SITSD  
PO Box 200113  
125 N. Roberts Street, Mitchell Bldg.  
Helena, MT 59620-0113  
Attn.: SITSD, RM 229  
Tel.: 406-444-2000  
Fax: 406-444-2701

Esri: Environmental Systems Research Institute, Inc.  
380 New York Street  
Redlands, CA 92373-8100  
USA

Project/Technical Notice—Attn.: John Perry,  
Contracts Manager Esri Professional Services  
Tel.: 909-793-2853, extension 1133  
Fax: 909-307-3034

Legal Notice—Attn.: Contract Manager  
Tel.: 909-793-2853  
Fax: 909-307-3020

With a copy to John Perry, Contracts Manager Esri Professional Services

Notice for non-US Licensees shall be deemed to have been received (i) upon delivery in person; (ii) upon the passage of seven (7) days following post by international courier service with shipment tracking provisions; or (iii) upon transmittal by confirmed e-mail or facsimile, provided that if sent by e-mail or facsimile, a copy of such notice shall be concurrently sent by receipted international courier service, with an indication that the original was sent by e-mail or facsimile and the date of its transmittal.

#### **ARTICLE 19—ASSIGNMENT AND DELEGATION**

Esri may, in whole or in part, assign any of its rights or delegate any performance under this Addendum, provided that Esri shall remain responsible for the performance it delegates. This Addendum binds and benefits successors or assigns permitted under this Article 19.

**ATTACHMENT A  
SAMPLE TASK ORDER**

Esri Agreement No. \_\_\_\_\_

Task Order No. \_\_\_\_\_

In accordance with the terms and conditions of the above-referenced Addendum between Environmental Systems Research Institute, Inc. (Esri), and \_\_\_\_\_ (Licensee), \_\_\_\_\_ (Licensee Address), this Task Order authorizes preparation and provision of the Services Output and/or Deliverables described and in accordance with the terms, schedule, and start/end date(s) specified below.

- 1. Scope of Work: [As applicable, specifically identify and describe Services Output or Deliverables including Custom Code, Map Data, and Technical Data (including Technical Assistance) and the resources to be provided by Licensee (including Licensee-supplied personnel, software, hardware, and digital or hard-copy data), and place of delivery and location where technical assistance will be provided.]

In addition to the foregoing, Licensee agrees that its employees, representatives, and subcontractors will cooperate and communicate with Esri during performance of this Task Order. Without cost to Esri, Licensee shall provide, allow access to, or assist Esri in obtaining all data Esri requests for performance of this Task Order, including, but not limited to, (1) copies of previously prepared reports, maps, plans, surveys, records, and other documents in the control or possession of Licensee and (2) copies of ordinances, codes, regulations, or other governmental documents.

- 2. Contract Type [Firm Fixed Price (FFP) or Time and Materials (T&M)]:
- 3. Total Task Order Value (if FFP) or Not-to-Exceed Value (if T&M):
- 4. Licensee Address for the Receipt of Esri Invoices:
- 5. Delivery Schedule or Start/End Date(s) for Each Deliverable:
- 6. Special Considerations:
- 7. Esri Project Manager: (insert name, telephone, fax, and e-mail address)  
 Esri Senior Contract Administrator: (insert name, telephone, fax, and e-mail address)  
 Licensee Project Manager: (insert name, telephone, fax, and e-mail address)  
 Licensee Senior Contract Administrator: (insert name, telephone, fax, and e-mail address)  
 Licensee Accounts Payable Contact: (insert name, telephone, fax, and e-mail address)

ACCEPTED AND AGREED:

\_\_\_\_\_  
 (Licensee)

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ENVIRONMENTAL SYSTEMS  
 RESEARCH INSTITUTE, INC.  
 (Esri)

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTACHMENT B**  
**2019 TIME AND MATERIALS RATE SCHEDULE**

***Effective January 1, 2019***

Hourly time and materials labor rates have been provided for each labor category for calendar year 2019. The hourly labor rates for services that are performed after 2019 may be escalated in an amount not to exceed five percent (5%) each year. Other direct costs, such as travel, reproduction, subcontractor, telecommunication/freight, or materials, will be charged a material handling fee and invoiced.

Esri reserves the right to provide fixed price quotations for professional services requests that require deliverables other than hours. Work performed under fixed price orders will require additional terms and conditions and will be invoiced monthly based on percentage completed.

**GIS Technical Specialist/Engineer (S1)**

**Hourly Rate: \$235**

Staff members in this labor category work collaboratively with software designers to perform software coding and the writing of software documentation according to design specifications developed by senior technical staff described below. As a group, these staff members are experienced in the coding of software and the creation of digital databases, as well as in software development associated with Esri's commercial off-the-shelf (COTS) software products; web, desktop, or server software development languages; geospatial data formats; and other technologies. These individuals also develop effective database designs, implement data conversion processes and procedures, and perform software and database quality control. This category also includes staff involved in the development and delivery of training and those with expertise in creating, editing, and teaching training content.

**GIS System/Software Developer (S2)**

**Hourly Rate: \$304**

Staff members in this labor category support the design of technical project specifications for the implementation of application software projects and database development projects. They support the day-to-day technical activities of the project team and ensure that standard system methodologies are employed. They also perform detailed software design and detailed database conversion design and are directly involved in the coding and implementation of complex and strategic portions of application software and database conversion projects. As a group, these staff members are proficient in Esri COTS software products; web, desktop, and server software development languages; geospatial data formats; and other technologies. These staff members design and develop QA/QC programs and support design and code reviews, database reviews, and other QA/QC activities throughout the project life cycle. This category of staff includes senior staff who apply subject-matter expertise to design, develop, and deliver training content and supporting technologies, leveraging adult learning methodologies.

**Senior GIS System/Software Architect (S3)**

**Hourly Rate: \$373**

Staff members in this labor category provide the overall technical vision and system architecture for large, complex systems. They support the application of sound software engineering principles and life cycle methodologies to programs/projects. These individuals are actively involved in systems architecture design, application software design, database process design, and the directing of coding development including the supervision of design and code reviews. These staff members may serve as principal investigators in focused studies or research and development projects. Individuals in this labor category have broad technical knowledge of geographic information system (GIS) applications and related information technologies and may also provide specific expertise in areas such as web-based software applications, service-oriented architectures, data warehousing, spatial analysis, and modeling. As a group, these staff members are proficient in Esri COTS software products; software and database design methodologies; web, desktop, and server software development languages; geospatial data formats; and other technologies.

**GIS Consultant/Project Manager (M1)****Hourly Rate: \$285**

Staff members in this labor category provide day-to-day consulting and management for contracted projects within Esri. These individuals work under the guidance of senior Esri managers described herein and support the design and implementation of project work plans. These staff members may provide consulting services to several aspects of GIS implementation. They may also conduct detailed requirements interviews, document application requirements, develop logical and physical database designs using standard engineering diagramming methodologies, design software and database QA/QC programs, and provide management oversight of daily technical activities. These staff members work with senior consulting and technical staff to design comprehensive work plans that employ standard system methodologies that define project deliverables, milestones, and realistic schedules. These individuals work with Esri administrative staff to ensure that progress and financial reporting is provided according to contract requirements. This category of staff may also consult and manage training development and delivery projects.

**Senior GIS Consultant/Project Manager (M2)****Hourly Rate: \$359**

Staff members in this labor category work as project managers or project advisers, providing strategic consulting and project management activities for GIS and information technology (IT) projects. These staff members have market/application domain expertise using extensive experience in GIS and related geospatial technologies to support the successful completion of a project. Consulting activities may include strategic planning, GIS workshops and seminars development, requirements definition, application and database design, and system integration. Management activities may include defining project requirements and objectives, establishing budgets and schedules, allocating staff and other resources, and managing and overseeing subcontractor activities. These individuals may also design comprehensive work plans that employ standard system methodologies that define project deliverables and milestones and realistic schedules.

**Principal GIS Consultant/Program Manager (M3)****Hourly Rate: \$473**

Staff members in this labor category work as program directors or project advisers, providing project vision, strategic consulting, and program management activities for GIS and IT projects. These staff members apply market/application domain expertise using extensive experience in GIS and related geospatial technologies to support the successful completion of the program. Consulting activities may include strategic planning, review and oversight of requirements definitions, application and database design, and system integration. Management activities may include defining program requirements and objectives, establishing budgets and schedules, allocating staff and other resources, and managing and overseeing subcontractor activities. Staff members in this labor category work with senior client staff in coordination with Esri senior management to resolve issues and support successful project completion.

**GIS Database Specialist/Analyst (DB)****Hourly Rate: \$198**

Staff members in this labor category provide database development support in creating cartographic and digital data products. These staff members have expertise that includes the performance of hard copy to digital data conversion tasks, data migration, and translation activities utilizing advanced processing techniques in ArcGIS. These individuals design, develop, and implement efficient production tools and workflows in accordance with approved project plans and design parameters.